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8 UNITED STATES DISTRICT COURT

9 CENTRAL DISTRICT OF CALIFORNIA

10 ONYANGO MERCELINE,) CASE NO. CV 12-1330-MMM (PJW)
11)
12 Plaintiff,) ORDER DISMISSING ACTION FOR
13 v.) FAILURE TO PROSECUTE
14 Defendants.)
15 _____)

16 In 2012, Plaintiff Onyango Merceline, a state prisoner proceeding
17 *pro se*, filed this civil rights action alleging, among other things,
18 that prison personnel at the California Institution for Women and
19 other state prisons kept her incarcerated beyond her release date,
20 destroyed her personal property, were deliberately indifferent to her
21 serious medical needs, and took her blood without her consent.
22 Plaintiff subsequently informed the Court that she was subject to
23 removal and anticipated being removed eight months. (Doc. No. 11.)

24 After screening the Complaint, the Court issued an order to show
25 cause as to why it should not be dismissed for failure to exhaust.
26 (Doc. No. 13.) The Court also inquired as to whether Plaintiff wished
27 to continue to pursue her claims in light of her imminent deportation.

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1 Plaintiff subsequently requested an extension of time in which to
2 show cause or file an amended complaint, which the Court granted.
3 (Doc. Nos. 14, 16.) In September 2013, she filed a First Amended
4 Complaint ("FAC") but it, too, was dismissed at the screening stage in
5 November 2013. (Doc. No. 23.) The Court granted Plaintiff leave to
6 file a Second Amended Complaint ("SAC") no later than December 23,
7 2013. (Doc. No. 23.)

8 The Court's order dismissing the FAC was returned by the Post
9 Office as undeliverable because Plaintiff was no longer at the address
10 on file with the Court. (Doc. No. 24.) In addition, a prior minute
11 order by the Court denying Plaintiff's request for appointment of
12 counsel was returned as undeliverable. (Doc. Nos. 20, 21, 22.)
13 Presumably because she did not receive the Court's orders, Plaintiff
14 failed to file the SAC by the deadline.

15 In the interim, however, Plaintiff wrote to the Court stating
16 that she had again changed her address. (Doc. No. 26.) In response,
17 in February 2014, the Court issued another minute order informing
18 Plaintiff that it was re-sending its prior orders dismissing the FAC
19 and denying her request for appointment of counsel. (Doc. No. 27.)
20 In addition, the Court granted Plaintiff leave to file a SAC no later
21 than March 20, 2014. The Court admonished Plaintiff that it was her
22 responsibility to provide the Court with notice of her current address
23 and that, if she failed to do so, the action would be subject to
24 dismissal. These orders were returned to the Court undeliverable and
25 Plaintiff failed to file a SAC. (Doc. Nos. 28, 29.) To date,
26 Plaintiff has not filed a SAC nor provided the Court with an address
27 where she can be reached. Given Plaintiff's previous pleadings
28 informing the Court that she was in ICE custody and anticipated being

1 removed from the country at any time it appears likely that she has
2 been deported.

3 It is well established that a district court has the authority to
4 dismiss an action for failure to prosecute or for failure to comply
5 with its orders. Fed. R. Civ. P. 41(b); *Link v. Wabash Railroad Co.*,
6 370 U.S. 626, 629-31 (1962) (district court has authority to dismiss
7 for lack of prosecution in order to prevent undue delay in disposing
8 of pending cases and to avoid congestion in court's calendar); *Ferdik*
9 v. *Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992) (district courts have
10 authority to dismiss actions for failure to comply with any order of
11 the court). In determining whether dismissal is appropriate, the
12 court considers five factors: (1) the public interest in expeditious
13 resolution of litigation; (2) the Court's need to manage its docket;
14 (3) the risk of prejudice to defendants; (4) the public policy
15 favoring disposition of cases on their merits; and (5) the
16 availability of less drastic sanctions. *Ferdik*, 963 F.2d at 1260-61.

17 Here, the first two factors--the public interest in expeditious
18 resolution of litigation and the Court's need to manage its docket--
19 weigh heavily in favor of dismissal. Despite being granted extensions
20 of time, Plaintiff has failed to file a SAC. There is therefore no
21 operative complaint in this matter on which the litigation can
22 proceed. In addition, Plaintiff has failed to comply with the Court's
23 orders requiring her to keep the Court informed of her current
24 address, despite being warned that the case could be dismissed if she
25 failed to do so. Not only is the Court now unable to communicate with
26 her to move the case forward, but Plaintiff's conduct indicates to the
27 Court that she does not intend to comply with its directives or
28 diligently pursue this action. It is therefore against the public

1 interest in expeditious resolution of cases and against the Court's
2 interest in managing its docket to expend judicial time and resources
3 on an action which Plaintiff appears to no longer want to pursue.

4 With respect to the third factor--prejudice to Defendants--they
5 have not been served yet and presumably are not yet aware that the
6 action has been filed. Nevertheless, Defendants are likely to suffer
7 prejudice as a result of the delay in this action because witnesses'
8 memories are likely to fade and important evidence defendants may need
9 to defend against Plaintiff's claims may be lost.

10 While the fourth factor--the public policy in favor of deciding
11 cases on their merits--generally weighs against dismissal, it is
12 Plaintiff's responsibility to move the case towards disposition at a
13 reasonable pace. *Morris v. Morgan Stanley*, 942 F.2d 648, 652 (9th
14 Cir. 1991). This, Plaintiff has not done. The Court has not heard
15 from Plaintiff in nearly four months. Considering her repeated
16 failures to file a SAC or comply with the Court's orders, as well as
17 the number of attempts by the Court to move her case forward, the
18 public policy favoring resolution on the merits must cede to the other
19 important factors addressed herein.

20 The fifth factor--availability of less drastic alternatives--also
21 weighs in favor of dismissal. The Court cannot impose any lesser,
22 alternative sanctions, such as monetary sanctions, because Plaintiff
23 cannot be located and because she is indigent.

24 Given the foregoing circumstances, dismissal for failure to
25 prosecute is warranted in this action. The action, therefore, is
26 dismissed without prejudice under Federal Rule of Civil Procedure
27 41(b), Local Rule 41-6, and the Court's inherent power to orderly and
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1 expeditiously dispose of cases by dismissing those in which the
2 plaintiff fails to prosecute.¹ *Link*, 370 U.S. at 629-31.

3 IT IS SO ORDERED.

4 DATED: May 22, 2014

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6 MARGARET M. MORROW
7 UNITED STATES DISTRICT JUDGE

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13 Presented by:
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15 /S/ Patrick J. Walsh
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PATRICK J. WALSH
17 UNITED STATES MAGISTRATE JUDGE
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¹ Local Rule 41-6 provides that, if a party proceeding *pro se*
fails to keep the Court apprised of his current address, "the Court
may dismiss the action with or without prejudice for want of
prosecution."